

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CARLOS DAVENPORT,

Petitioner,

v.

CASE NO. 2:14-CV-0245
JUDGE GEORGE C. SMITH
MAGISTRATE JUDGE KEMP

WARDEN, ROSS
CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

On March 24, 2015, the Magistrate Judge issued an *Order and Report and Recommendation* recommending that Petitioner's *Motion to Stay* be denied, that his motion to amend be granted, and that the petition for a writ of habeas corpus be dismissed. Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. ECF 11.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection*, ECF 11, is **OVERRULED**. The *Order and Report and Recommendation*, ECF 10, is **ADOPTED** and **AFFIRMED**. Petitioner's *Motion to Stay and Amend*, ECF 7, is **GRANTED**, in part, and **DENIED**, in part. This action is hereby **DISMISSED**.

Petitioner is serving two consecutive terms of 25 years to life imprisonment on his convictions after a jury trial in the Franklin County Court of Common Pleas on two counts of raping a child under the age of 13 and one count of kidnapping incident to the rape. Petitioner challenges these convictions on grounds of the denial of the right to counsel, failure to disclose exculpatory evidence, ineffective assistance of counsel, insufficiency of the evidence, violation

of the Confrontation Clause, denial of the right to introduce evidence, and the improper appointment of counsel without Petitioner's knowledge or acquiescence. The Magistrate Judge recommended dismissal of these claims as procedurally defaulted or without merit. Petitioner objects to those recommendations.

Petitioner argues that the trial judge, bailiff and defense counsel conspired against him, committing egregious purposeful and malicious unlawful conduct constituting structural error and causing his trial to be fundamentally unfair. *Objection*, ECF 11, PageID# 915. In view of the foregoing, Petitioner contends that the *Report and Recommendation* is based on inaccurate information. *Id.*

Petitioner objects to the Magistrate Judge's denial of his motion for a stay. He complains that the state trial court never ruled on his September 24, 2012, *Notice of Intent to File Petition for Post Conviction Relief* and for an extension of time for filing, ECF 6-1, PageID# 169, and asserts that Respondent has engaged in intentional dilatory tactics. *Objection*, ECF 11, PageID# 919. Petitioner indicates that he has acted diligently, but his attempts to pursue his claims have been futile. PageID# 920. He asserts that fraud and fraudulent acts have denied him a fair trial. He complains that the state trial court did not timely deny a May 20, 2014, post conviction petition he has attached to his *Objection* (see ECF 933-934), that the trial court improperly dismissed the post conviction petition as untimely, and argues that this demonstrates "bias, prejudice, abuse of discretion" and the denial of equal protection. PageID# 921. Petitioner refers to the disciplinary action against his former trial attorney, Kenneth Boggs. PageID# 927; 948-49, and appears to argue that he suffered prejudice on this basis. PageID# 929. He again asserts that he is actually innocent of the charges against him.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. The record indicates that Boggs withdrew as Petitioner's attorney in November 2010, and thereafter had no involvement in Petitioner's case. PageID# 97-99. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, the record does not indicate that a stay is warranted or that any of Petitioner's claims provide him relief under the terms of the Antiterrorism and Effective Death Penalty Act. 28 U.S.C. § 2254(d), (e). Petitioner has failed to establish cause or prejudice for his procedural defaults. Further, the record fails to indicate that this case is of the extraordinary nature so as to reflect Petitioner's actual innocence of the charges or justify a merits review of these claims. See *Souter v. Jones*, 395 F.3d 577, 589-90 (6th Cir. 2005).

Therefore, Petitioner's *Objection*, ECF 11, is **OVERRULED**. The *Order and Report and Recommendation*, ECF 10, is **ADOPTED** and **AFFIRMED**. Petitioner's *Motion to Stay and Amend*, ECF 7, is **GRANTED**, in part, and **DENIED**, in part. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT